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CONTACT: Bruce I. Sanders, Public Affairs

716.879.4410 or 716.481.5439

Bruce.I.Sanders@usace.army.mil

Ohio court ruling on Lake Erie littoral zone will not effect Corps of Engineers jurisdiction

BUFFALO, NY—A recent decision by an Ohio court in the case of State ex rel. Robert Merrill, Trustee, et al. v. State of Ohio, Department of Natural Resources et al., Court of Common Pleas, Lake County, Ohio, has altered the extent of the State of Ohio's regulatory authority over the littoral zone, that is, the zone between low and high water, along the shores of Lake Erie. Judge Eugene A. Lucci's 77-page opinion has sparked questions from the public regarding the extent to which this ruling affects the United States jurisdiction under the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

This Court's decision is a matter of Ohio State law and has no effect on the scope of regulatory jurisdiction of the United States, acting through the Department of the Army, Corps of Engineers, pursuant to Section 10 of the Rivers and Harbors Act (33 U.S.C. § 404) and Section 404 of the Clean Water Act (33 U.S.C. § 1344). This Federal jurisdiction along the Lake Erie shoreline, for work not involving wetlands, begins at the ordinary high water mark which is defined as 573.4 feet International Great Lakes Datum (IGLD) 1985. All work performed below the ordinary high water mark remains subject to Federal regulatory jurisdiction and requires authorization from the Corps of Engineers, Buffalo District. Private ownership of the underlying lands, as determined by the Court of Common Pleas, has no bearing on the existence or extent of this Federal jurisdiction over a navigable waterbody (33 C.F.R. 329.11(a)(2)).

-30-

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